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APR 6 1987

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ANIOL, JR.

CLERK

THE PEOPLE OF THE STATE OF MICHIGAN
PETITIONER
vs.
RONNIE WILLIAMS
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF MICHIGAN

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Prosecuting Attorney
County of Wayne

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STATEMENT OF QUESTION PRESENTED

**DOES THE SIXTH AMENDMENT RIGHT
TO SPEEDY TRIAL ATTACH UPON
ARREST, OR UPON THE
ARRAIGNMENT OF THE DEFENDANT
ON FORMAL CHARGES (IN A
SITUATION WHERE DEFENDANT WAS
ARRESTED, RELEASED, AND A
NOT-IN-CUSTODY WARRANT
ISSUED)?**

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF MICHIGAN
Petitioner,

v

RONNIE WILLIAMS
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF MICHIGAN

NOW COME the People of the State of Michigan, by John D. O'Hair, Prosecuting Attorney for the County of Wayne, and Timothy A. Baughman, Chief of the Criminal Division, Research, Training and

Appeals, and pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Michigan entered in the above cause on September 4, 1986, leave to appeal denied by the Michigan Supreme Court on February 17, 1987 (three justices dissenting).

OPINIONS BELOW

The opinion of the Michigan Court of Appeals is unreported and is appended as Appendix A. The order of the Michigan Supreme Court denying leave to appeal is appended as Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered on September 4, 1986. The order of the Michigan Supreme Court

was entered on February 17, 1987. the jurisdiction of this Court is invoked under 28 USC 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part, that "In all criminal prosecutions, the accused shall enjoy the right to a speedy...trial...."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 13, 1983, the respondent was arrested for possession with intent to deliver a controlled substance; to-wit, heroin. The respondent was conveyed to the police station and released while officers sought a not-in-custody warrant. On August 16, 1983 a chemical analysis was conducted on the suspected controlled substance finding 4.78 grams of powder containing heroin. On September 8, 1983 a warrant was recommended by the Prosecutor's Office, and a complaint and warrant issued. The respondent was brought back into court in mid 1985 as a result of a police search of his home, at which time the police became aware that there existed an outstanding warrant for the respondent (3-4). On June 28, 1985

the respondent waived his right to a preliminary examination. On or about August 15, 1985 the respondent filed a motion to dismiss based on a lack of speedy trial. That motion was heard on August 27, 1985 before the Honorable Henry L. Heading, Judge of the Recorder's Court for the City of Detroit. The respondent argued that the delay in bringing the respondent to trial was not justified and that the prejudice after an 18 month delay was presumed (4). The People responded that the argument before the court was not a speedy trial argument; rather, it was a speedy arrest argument (5,7). The court agreed with the defense conjecture that "suppose there were witnesses that could have testified at a trial." (11). The court ultimately found an unnecessary delay and dismissed the charges against the respondent. The

People appealed as a matter of right.

On appeal the Michigan Court of Appeals held that the initial arrest and release of respondent triggered the Sixth Amendment right to speedy trial ("the right to a speedy trial attaches upon arrest"), without regard to an arraignment of the accused on formal charges.

The Michigan Supreme Court denied leave to appeal, three justices dissenting, with one justice noting that "the issue is of jurisprudential significance to both defendants and the people because of the frequency with which defendants are arrested, released, and the warrant remains outstanding until it is discovered during the investigation of an unrelated matter."

~~REASONS FOR GRANTING THE WRIT~~

In reliance upon cases from this Court, namely United States v Marion, 404 US 307, 313; 92 S Ct 455,459; 30 L Ed 2d 468,474 (1971) and United States v McDonald, 456 US 1; 102 S Ct 1497; 71 L Ed 2d 696 (1982), the Michigan Court of Appeals held that an arrest rather than an arraignment of the accused on formal charges triggers the Sixth Amendment right to speedy trial (the respondent here was released pending analysis of the drugs seized, and a not-in-custody warrant subsequently issued). Petitioner submits that the court misconstrued this Court's holdings.

The Sixth Amendment speedy trial provision has no application until the putative defendant in some way becomes an

"accused". United States v Marion, 404 US 307, 313; 92 S Ct 455,459; 30 L Ed 2d 468,474 (1971). A closer inspection of the Marion case, the case relied upon by the Michigan Court of Appeals, clarifies the point at which the right attaches. The Court spoke of the Sixth Amendment right as an important safeguard to prevent undue and oppressive incarceration prior to trial. 404 US, supra at 320. The Court stated "So viewed, it is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment"(emphasis added). 404 US supra at 320.

In the instant case, while the not-in-custody warrant was issued in 1983, there were no restraints occasioned by the actual arrest and detention of the respondent until 1985. The arrest which resulted in the respondent's release from the stationhouse was not conducted pursuant to a warrant and did not involve the restraints contemplated by the Marion Court so as to trigger the speedy trial protections (8). It is submitted that the speedy trial right of the Sixth Amendment and the case law which interprets the same is inapplicable to the instant case.

The respondent is not left without a claim, as noted by the United States Supreme Court in subsequent cases which reaffirmed the Marion rule. The Court in United States v Lovasco, 431 US 783, 97 S Ct 2044; 52 L Ed 2d 752 (1977) ruled that

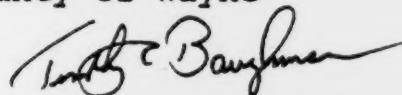
a defendant does have a due process claim in the event of a finding of offensive pre-indictment delay. That claim has not been litigated in this case.

CONCLUSION

WHEREFORE, petitioner respectfully requests, for the reasons above stated, that the petition for certiorari be granted.

Respectfully submitted,

JOHN D. O'HAIR
Prosecuting Attorney
County of Wayne



TIMOTHY A. BAUGHMAN
Chief of the Criminal Division
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APPENDICES



OPINION OF THE MICHIGAN COURT OF
APPEALS

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,
September 4, 1986

v.
RONNIE WILLIAMS,

Defendant-Appellee.

Docket No. 70711

Before: MacKenzie, P. J., and Beasley
and C. W. Simon*, J. J.

PER CURIAM

Defendant was charged with possession with intent to deliver a controlled substance, MCL 333.7401(2)(a); MSA 14.15(7401)(2)(a). The people appeal as of right from an order dismissing the charge on the basis of a speedy trial violation. We affirm.

*Circuit Judge, sitting on the Court of Appeals by assignment.

The facts are not in dispute. On July 13, 1983, defendant was arrested without a warrant for possession with intent to deliver a controlled substance, taken to the police station, and then released without a date to appear in court. In September 1983, after analysis of the substance taken from defendant at the time of his arrest was found to be heroin, a complaint and warrant for defendant's arrest were issued. In June 1985, while investigating an unrelated matter, the police discovered the outstanding warrant and again arrested defendant. Following his waiver of preliminary examination, defendant successfully moved to dismiss based on lack of speedy trial.

On appeal, plaintiff contends that the July 1983 arrest of defendant did not trigger the speedy trial protections because it was not conducted pursuant to a warrant and did not result in defendant's "restraint" within the meaning of the Sixth Amendment. We do not agree. The right to a speedy trial attaches upon arrest. United States v Marion, 404 US 307; 92 S Ct 455; 30 L Ed 468 (1971); People v Grimmett, 388 Mich 590; 202 NW2d 278 (1972), overruled on other grounds 390 Mich 245, 258 (1973). The right is not dependent upon whether the defendant is kept in custody. People v Den Uye, 320 Mich 477; 31 NW2d 699 (1948). The speedy trial guarantee is designed not only to minimize the possibility of lengthy incarceration, but also to shorten the disruption of life caused by arrest and the presence of

unresolved criminal charges. United States v McDonald, 456 US 1; 102 S Ct 1497; 71 L Ed 2d 696 (1982).

After reviewing the record in light of the four factors articulated in Barkeer v Wingo, 407 US 514; 92 S Ct 2182; 33 L Ed 2d 101 (1972) and adopted in Grimmett, supra, we conclude that the trial court did not abuse its discretion in dismissing the charges against defendant.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William R. Beasley
/s/ Charles W. Simon, Jr.

ORDER OF THE MICHIGAN SUPREME COURT

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 17th day of February in the year of our Lord, one thousand nine hundred and eighty-seven.

Present the Honorable DOROTHY COMSTOCK RILEY, Chief Justice

CHARLES L. LEVIN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
DENNIS W. ARCHER,
ROBERT P. GRIFFIN,
Associate Justices

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v. SC: 79512

COA: 87446

LC: 85-03865

RONNIE WILLIAMS,

Defendant-Appellee.

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Brickley, J., and Riley, C. J., would grant Leave to appeal.

Boyle, J., would grant leave to determine whether, absent a formal indictment or information, the Sixth Amendment right to speedy trial is triggered by the arrest of a defendant who is not detained. The issue is of jurisprudential significance to both defendants and the people because of the frequency with which defendants are arrested, released, and the warrant remains outstanding until it is discovered during the investigation of an unrelated matter.

STATE OF MICHIGAN -- ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of

an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

(seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affirmed the seal of said Supreme Court at Lansing, this 17th day of February in the year of our Lord one thousand nine hundred and eighty-seven.

/s/ Jacqueline B. MacKinnon
Deputy Clerk



EDITOR'S NOTE

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NO. 86-1604

IN THE
SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

-vs-

RONNIE WILLIAMS,

Respondent-Appellee.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

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NO. 86-1604

IN THE
SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner.

-vs-

RONNIE WILLIAMS,

Respondent.

APPELLEE'S MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, RONNIE WILLIAMS, asks leave to file the attached Brief in Opposition to Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Supreme Court Rule 46.

Respondent states as follows in support of this motion:

1. The Recorder's Court for the City of Detroit found Respondent indigent and without means to secure counsel on June 23, 1985.

2. On January 17, 1986, the Recorder's Court for the City of Detroit found Respondent indigent and without means to secure counsel for appellate review.

3. A certified copy of Respondent's affidavit of indigency is attached pursuant to Supreme Court Rule 46; 18 U.S.C. Subsection 3006(A)(d)(6).

WHEREFORE, Respondent asks this Honorable Court for leave to

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proceed in forma pauperis.

Respectfully submitted,

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Dated: May 4, 1987

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NO. 86-1604

IN THE

SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

RONNIE WILLIAMS,

Respondent.

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

WHERE A 23-MONTH DELAY EXISTS BETWEEN THE ARREST AND ARRAIGNMENT OF THE DEFENDANT ON FORMAL CHARGES, DOES THE RIGHT TO A SPEEDY TRIAL ATTACH UPON THE ARREST (IN CIRCUMSTANCES WHERE THE DEFENDANT WAS ARRESTED, INTERROGATED AND RELEASED ON RECOGNIZANCE)?

COUNTERSTATEMENT OF THE CASE

On July 13, 1983, defendant was arrested without a warrant for possession with intent to deliver a controlled substance in violation of Mich. Comp. Laws Ann. Subsection 333.7401(2)(a), taken to the police station, interrogated and then released on recognizance without a date to appear in court. In September 1983, after analysis of the substance taken from defendant at the time of his arrest was found to be heroin, a complaint and warrant for defendant's arrest was issued. In June 1985, while investigating an unrelated matter, the police discovered the outstanding warrant and again arrested defendant.

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No efforts were made by the police to serve the warrant between the date of issuance, September 16, 1983, and the date of the unrelated search in June, 1985.

Following his waiver of preliminary examination, Defendant successfully moved to dismiss based on lack of speedy trial.

On appeal, the Michigan Court of Appeals, in an unpublished per curiam opinion, held that the right to a speedy trial attaches upon arrest, and is not dependent upon whether the defendant is kept in custody.

The appellate court, then, reviewed the record and concluded that the trial court did not abuse its discretion in dismissing the charges against defendant.

REASONS FOR DENYING THE WRIT

THE MICHIGAN COURT OF APPEALS HOLDING THAT RESPONDENT WAS DENIED HIS RIGHT TO A SPEEDY TRIAL WAS BASED UPON THE CORRECT APPLICATION OF FEDERAL CASE LAW AND THE PETITIONER'S RELIANCE UPON FEDERAL CASE LAW IS MISPLACED AND MISLEADING

The prosecutor argues that a defendant who is arrested but not confined [between arrest and arraignment on the formal charges] does not have a sixth amendment right to a speedy trial.

He contends there is no legal requirement to bring the Defendant to trial after the arrest and issuance of the arrest warrant and, thus, the speedy trial inquiry is inappropriate.^{1/} He so contends, even though he has admitted throughout the proceedings that the Defendant was arrested in 1983 but not brought to trial for 23 months.

The Petitioner distinguishes the arrest of Ronnie Williams, arguing, "that's not an arrest for the purpose of a speedy trial

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1/ Transcript of proceedings Recorder's Court for the City of Detroit, pp. 6, 7.

right" and attempts to set up two standards for arrests; one which would trigger the Sixth Amendment guarantees and the other which would not.^{2/} There is no such distinction in the law.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial * * *," US Const, Am VI. In Michigan, the right to a speedy trial is guaranteed by the Michigan Constitution, Const 1963, art 1 §20 and Mich. Comp. Laws Ann. § 768.1. Although the Sixth Amendment speedy-trial provision has no application until the putative defendant in some way becomes an "accused", United States v. Marion, 404 U.S. 307, 313; 92 S. Ct. 455, 459; 30 L. Ed. 2d 468, 474 (1971), the constitutional right to a speedy trial commences upon either formal indictment or upon actual restraint of the accused. 404 U.S. 307, 320.

The Petitioner quotes and emphasizes a passage from Marion to support his theory that an arrested defendant, who has not been indicted [or formally arraigned], must be restrained, or in custody, before the right to a speedy trial is triggered. The reliance upon this passage is misplaced and Petitioner attempts to mislead by selectively quoting only a portion of a section of the opinion which, when placed in the proper context, supports the Respondent's position.

Following the passage quoted by the Petitioner, the Court stated, "Invocation of the speedy trial provision thus need not await indictment, information, or other formal charge."^{3/} But we

2/ Transcript of proceedings Recorder's Court for the City of Detroit, p. 8. Petition for a Writ of Certiorari, p. 13.

3/ The court, at fn. 12, quoting from the ABA Standard's Relating to Speedy Trial, n. 10, supra, at 6, defined the time at which the beginning of the delay period should be computed as "the date the charge is filed, except that if a defendant has been continuously held in custody or on bail or recognizance until that date to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, then the time for trial should commence running from the date he was held to answer." Rule 2.2.(a). (emphasis added.)

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decline to extend the reach of the amendment to the period prior to arrest. Until this event occurs, a citizen suffers no restraints on his liberty and is not the subject of public accusation; his situation does not compare with that of a defendant who has been arrested and held to answer." 404 U.S. 307, 321.

Reading this section of the opinion in its entirety, along with fn. 12 of the opinion, it is clear that the Sixth Amendment guarantee applies to the situation where a defendant is arrested and released and that it is the actual arrest which causes the defendant to suffer the restraints upon his liberty that engage the particular protections of the speedy trial provision of the Sixth Amendment.

Further, in United States v. McDonald, 456 U.S. 1; 102 S. Ct. 1497; 71 L. Ed. 2d 696 (1982), the court specifically states that, "in addition to the period after indictment, the period between arrest and indictment must be considered in evaluating a speedy trial clause claim," citing Dillingham v. United States, 423 U.S. 64; 96 S. Ct. 303; 46 L. Ed. 2d 205 (1975).

In this case, the actual restraint of the accused occurred when he was arrested, transported to the station, "booked", and interrogated. He was, then, released on recognizance, but held to answer the criminal charge as evidenced by the fact that the warrant was never dismissed but was served and prosecuted upon 21 months later. Under United States v. Marion, *supra*, he was entitled to a speedy trial which he was denied.

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THE MICHIGAN COURT OF APPEALS HOLDING THAT
THE RIGHT TO A SPEEDY TRIAL ATTACHES UPON
ARREST WAS BASED UPON THE CORRECT APPLICATION
OF MICHIGAN LAW, WHICH THE PETITIONER FAILS
TO ADDRESS OR ANALYZE

The prosecutor argues that the Michigan Court of Appeals, in holding that an arrest rather than an arraignment of the accused

on formal charges triggers the Sixth Amendment right to speedy trial, misconstrues this court's holdings [in United States v. Marion, 404 U.S. 307, 313; 92 S. Ct. 455, 459; 30 L. Ed. 2d 468, 474 (1971) and United States v. McDonald, 456 U.S. 1; 102 S. Ct. 1497; 71 L. Ed. 2d 696 (1982)].

He chose not to analyze, nor even address the Michigan authority cited in the lower court opinion.

In fact, the lower court based its decision upon a Michigan Supreme Court case which was factually identical to the instant action. People v. Grimmett, 388 Mich 590; 202 N.W. 2d 278 (1972), overruled on other grounds, 390 Mich 245, 258 (1973). In Grimmett, *supra*, the defendant contended that his right to a speedy trial was violated by the 19-month delay between his arrest and his indictment on the charge of assault with intent to commit murder. 388 Mich 590, 601. The Michigan Supreme Court held that the right to a speedy trial attaches to the period of time between an arrest and an indictment, citing United States v. Kaufman, 311 F. 2d 695 (CA 2, 1963); Hardy v. United States, 119 U.S. App. DC 364; 343 F. 2d 233 (1964), then went on to apply the balancing test, as espoused in Barker v. Wingo, 407 U.S. 514; 92 S. Ct. 2182; 33 L. Ed. 2d 101 (1972), to determine whether the right to speedy trial had been violated.

The above, narrow rule of Grimmett, relied upon by the Michigan Court of Appeals in this case and dispositive of the sole issue before this court, was adopted in People v. Fiorini (on rehearing), 59 Mich. App. 243; 229 N.W. 2d 399 (1975).

In the case at bar, the lower court held, further, that the speedy trial right is not dependent upon whether the defendant is kept in custody. People v. Den Uye, 320 Mich. 477; 31 N.W. 2d 699 (1948).

The Petitioner failed to address the state authority which,

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independently, is dispositive of the issue in Respondent's favor. The decision of the Michigan Court of Appeals is correct and is in conformity with federal and state law: and as such, will affect few others than the litigants.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

Respectfully submitted,

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Dated: May 4, 1987

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NO. 86-1604

IN THE

SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

RONNIE WILLIAMS,

Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify under penalty of perjury that a copy of Motion for Leave to Proceed in Forna Pauperis and Brief in Opposition to Petition for Writ of Certiorari and Appearance has been served on:

Frank J. Kelly, Attorney General
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Lansing, MI 48913

Wayne County Prosecutor
1441 St. Antoine
Detroit, MI 48226

by placing said documents in a properly addressed envelope with postage prepaid and placing said envelope in the United States Mail in the City of Detroit, Michigan, on this 4th day of May, 1987.

Said pleading was filed in the Supreme Court of the United States by depositing in the United States Mail on this 4th day of May, 1987, addressed as follows:

Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

Erica Walna Walker

Subscribed and sworn to before me
this 4th day of May, 1987

Erica Walna Walker
ERICA WALNA WALKER, Notary Public
Wayne County, Michigan
My Commission Expires: 2/10/88

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